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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,997	04/05/2001	Robert Gentile	M4065.0417/P417	3856

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EXAMINER
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CHU, GABRIEL L

ART UNIT	PAPER NUMBER
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2114

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DATE MAILED: 05/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/825,997

Applicant(s)

GENTILE, ROBERT

Examiner

Gabriel L. Chu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6122733 to Christeson et al.

### ***Response to Arguments***

3. Applicant's arguments filed 22 March 2004 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Christeson et al. discloses detection of a corrupted BIOS, recovery, and obtaining the recovery information from a remote source, while not explicitly disclosing how this recovery information from the remote source is identified or labeling the remote source as a "recovery server". From line 33 of column 10 (with emphasis), "In step 504, a **determination is made as to whether the first segment of BIOS is corrupted**. In one embodiment, if the first segment of BIOS is corrupted, the boot process executes a "precision" recovery of the corrupted segment from within the update mode, step 506.

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Unlike the "blind" recovery initiated from the update mode where a full reflash of all relevant segments of the segmented BIOS of nonvolatile memory 700 is "reflashed", the **"precision" recovery within the update mode** of step 506 merely "reflashes" those memory segments that have been identified as corrupted, in this case, memory segment 710. The method steps of the update mode will be described in greater detail below with reference to FIG. 6. In an alternate embodiment of the present invention, rather than immediately initiating the "precision" recovery of the update mode (step 506), the segmented BIOS "catalogs" the corrupted memory segment and continues with the analysis of additional memory segments until all memory segments have been analyzed and corrupted segments cataloged, whereupon the **"precision" recovery of the update mode** is initiated to "reflash" all cataloged corrupted memory segments. In yet another embodiment of the present invention, insofar as memory segment 710 of nonvolatile memory 700 contains at least a partial memory map of nonvolatile memory 700, if an initial analysis of this segment fails, a full reflash of all relevant segments of the BIOS is executed." Further, from line 11 of column 12 (with emphasis), "In one embodiment, the update information is configuration information stored on a machine readable medium with a predetermined filename. In the illustrated example embodiment of FIG. 6, the update information is available as a data file on a floppy that is inserted into an available disk drive of computer system 100. In alternate embodiments of the present invention, **the update information is made available during update mode from a remote source (e.g., a hard disk, or a network element).**"

Just from the apparatus disclosed by Christeson et al., it can clearly be seen that a request for a file (which in itself comprises information about a system) on a remote computer (a computer that serves that file) was contemplated by Christeson et al. However, Examiner further provides an element of notoriety to make even clearer the nature of any such remote computer recovery, i.e. Windows Update and IP protocol. A person of ordinary skill in the art at the time of the invention would have been motivated to send system information to an update server, such as one used in a Windows Update type system, because it can identify components needed by the computer corresponding to the system information. However, Applicant makes no claim as to what any such system information comprises or what function it performs. Hence, such system information may comprise a file name as already disclosed by Christeson et al., address data identifying a source or destination (certainly inherent in a system that communicates with a remote source), or any other such data that may fall under the broad auspices of "system information".

Applicant further takes issue with defining the remote data source as an "update" server versus a "recovery" server. Christeson et al. clearly disclose the functions of their apparatus within the context of both recovery and update, recovery occurring within their "update mode" (as indicated above). Regardless of what the data source is called, it performs the equivalent function.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

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USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). This specifically refers to the arguments regarding the specific function of a Windows Update type system to download regardless of corruption, and its reliance on a computer with a fully operative BIOS system. Such arguments wholly ignore the merits presented by Christeson et al. and, as such, constitute piecemeal analysis. Further, the functionality that is allegedly lacking in Windows Update has already been anticipated by Christeson et al.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (703) 308-


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7298. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel, Jr. can be reached on (703) 305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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